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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/080,909	05/19/1998	GEORGE ISHIKAWA	1075.1013-CC	9908

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STAAS & HALSEY LLP
700 11TH STREET, NW
SUITE 500
WASHINGTON, DC 20001

EXAMINER

MOSKOWITZ, NELSON

ART UNIT	PAPER NUMBER
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3663

DATE MAILED: 03/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/080,909

Applicant(s)

ISHIKAWA ET AL.

Examiner

Nelson Moskowitz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 164-184 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 164-184 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 17.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Applicant's letter received December 18, 2002 has been entered and the references listed on the IDS received November 5, 2002 have been considered. The request for a Continued Examination (RCE) under 37 CFR 1.114 is acceptable and a RCE has been established. An action on the RCE follows.

2. The text of those section of Title 35 U.S. Code not included in this action can be found in a prior Office action.

3. Claims 164-184 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antos et al when taken with the Kanamori OEC article or the Bjarklev text book.

In determining obviousness, the following factual determinations are made:

- a. first, the scope and content of the prior art;
- b. second, the difference between the prior art and the pending claims;
- c. third, the level of skill of a person of ordinary skill in the art; and,
- d. fourth, whether other objective evidence may be present, which indicates obviousness or nonobviousness. Graham v. John Deere Co., 282 U.S. 17-18, 148 USPQ 459, 466-67(1966). Objective evidence includes a long felt but unmet need for the claimed invention, failure of others to solve the problem addressed by the claimed invention, imitation or copying of the claimed invention, and commercial success due to the features of the invention and not other factors. See e.g., Simmons Fastener Corp. v. Illinois Tool Works, Inc., 739 Fed. 1573, 1574-76, 222 USPQ 744, 745-747 (Fed. Cir. 1984).

Examining the scope and content of the prior art we find the following:

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a) Antos et al discloses (Fig. 14) a multi-stage optical amplifier including a first amplifier (OFA-2) amplifying a signal, a dispersion compensator (DC fiber) given to the amplified optical signal, and a second amplifier (OFA-3) amplifying the dispersion compensated optical signal. Note that the term “multi-stage” is defined as occurring in more than one stage. Furthermore, OFA-2 operated in conjunction with the components placed within the dotted line box of figure 14 of this reference.

b) The latter cited article and textbook are exemplary of the well known prior art use of WDM signaling as it provides propagation of simultaneous signals, thus increasing bandwidth and the amount of information which can be transmitted at one time, and would be used for flexible upgrading.

Secondly, under Deere, the difference between this prior art and the pending claims lies in the combination of WDM signal transmission with the DC fiber between amplifiers as disclosed by Antos et al.

Third, under Deere the level of ordinary skill in this art may be determined by the analysis of the Court as set forth in Environmental Design Ltd. v. Union Oil Co. 713 F.3d 693, 218 USPQ 865-69 (Fed. Cir. 1983) cert. denied, 464 U.S. (1984), where the court listed these factors relevant to the determination of the level of ordinary skill: type of problems encountered in the art, prior art solutions, rapidity of innovations, sophistication of technology, and educational level of the active worker in the field.

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The types of problems encountered in the art involved signal dispersion and the loss of power due to the use of DC fibers. Innovation in this field has been very fast as can be seen from virtual birth of this field in the 1970's, to its present highly complex and sophisticated status.

Prior art solutions include using DC fibers and plural EDF amplifiers operating in a WDM mode in a single system .

Skilled artisan generally have graduate level education and over seven (7) years of experience, as can be seen from published articles in the major journals of this field. See, inter alia, the references of record.

To date, no secondary consideration (objective evidence) has been presented. Therefore, as the aforesaid prior art teaches the benefits of using WDM signaling, the use of WDM signals in a multiple amplifier system with DC fiber between the amplifiers would have been obvious to one skilled in this art.

A further indication of the obvious nature of the aforesaid combination is the expectancy of the beneficial results from using WDM, DC fibers, and plural amplifiers. This follows just as unexpected beneficial results would be evidence of unobviousness.

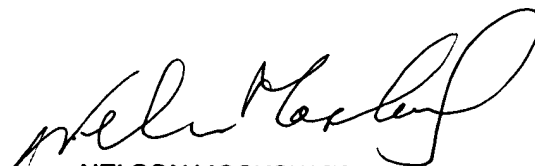
As the aforesaid prior art is known by optical physicists to provide the respective benefits and improvements as set forth above, the physicist would have been led to make the obvious combination of these teachings in order to obtain the benefits this prior art taught and an artisan would typically readily recognize.

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It is noted that an artisan would generally look to optimize signal communication systems which would otherwise carry only a single frequency. Such optimization ordinarily leads to lower costs, and better signal transmission in a very competitive business.

As the aforesaid prior art is known by optical physicists to provide the respective benefits and improvement as set forth above, the physicist would have been led to make the obvious combination of these teachings in order to obtain the benefits this prior art taught and an artisan would typically readily recognize.

4. In view of the Terminal disclaimer filed by Applicant the rejection of claims 164-184 for obvious type double patenting is hereby withdrawn.

A handwritten signature in black ink, appearing to read 'Nelson Moskowitz', with a large, stylized flourish at the end.

NELSON MOSKOWITZ
PRIMARY EXAMINER